

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ELMER EUGENE WALKER,

Petitioner,

v.

R. BURTON,

Respondent.

No. 2:22-CV-00558-KJM-DMC-P

ORDER

Petitioner, a prisoner proceeding pro se, brings this petition for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by Eastern District of California local rules.

On September 13, 2022, the Magistrate Judge filed findings and recommendations, which were served on the parties and which contained notice that the parties may file objections within the time specified therein. No objections to the findings and recommendations have been filed.

The court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed de novo. *See Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) (“[D]eterminations of law by the magistrate judge are reviewed de novo by both the district court and [the appellate]

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1 court . . .”). Having reviewed the file, the court finds the findings and recommendations to be
 2 supported by the record and by the proper analysis.

3 Pursuant to Rule 11(a) of the Federal Rules Governing Section 2254 Cases, the
 4 court has considered whether to issue a certificate of appealability. Before Petitioner can appeal
 5 this decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c); Fed. R. App. P.
 6 22(b). Where the petition is denied on the merits, a certificate of appealability may issue under
 7 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a
 8 constitutional right.” 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of
 9 appealability indicating which issues satisfy the required showing or must state the reasons why
 10 such a certificate should not issue. *See* Fed. R. App. P. 22(b). Where the petition is dismissed on
 11 procedural grounds, a certificate of appealability “should issue if the prisoner can show: (1) ‘that
 12 jurists of reason would find it debatable whether the district court was correct in its procedural
 13 ruling’; and (2) ‘that jurists of reason would find it debatable whether the petition states a valid
 14 claim of the denial of a constitutional right.’” *Morris v. Woodford*, 229 F.3d 775, 780 (9th Cir.
 15 2000) (quoting *Slack v. McDaniel*, 529 U.S. 473, 120 S. Ct. 1595, 1604 (2000)). For the reasons
 16 set forth in the Magistrate Judge’s findings and recommendations, the court finds that issuance of
 17 a certificate of appealability is not warranted in this case.

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. The findings and recommendations filed September 13, 2022, ECF No. 19,
 20 are adopted in full;
- 21 2. Respondent’s motion to dismiss, ECF No. 11, is granted;
- 22 3. The petition is dismissed for failure to exhaust state court remedies;
- 23 4. The court declines to issue a certificate of appealability;
- 24 5. Petitioner’s motion for discovery, ECF No. 5, is denied as moot; and
- 25 6. The Clerk of the Court is directed to enter judgment and close this file.

26 DATED: January 12, 2023.

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 CHIEF UNITED STATES DISTRICT JUDGE